

APPEAL NO. 030934
FILED JUNE 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 25, 2003. The hearing officer determined that respondent (claimant) sustained a compensable injury on _____; that claimant had disability from _____, through the date of the hearing¹; and that appellant (carrier) waived its right to contest the compensability of the claim. Carrier appealed these determinations on sufficiency grounds. Carrier also contends that the hearing officer abused his discretion in admitting three exhibits. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm as reformed.

We first note that Finding of Fact No. 3 states that claimant had disability beginning October 8, 2002, while Conclusion of Law No. 4 states that disability began on _____. In order to make this conclusion of law conform to the findings of fact, we reform the decision portion of the decision and order and Conclusion of Law No. 4 to state that, "Claimant had disability beginning October 8, 2002, and continuing through the date of the hearing."

Carrier contends that the hearing officer erred in admitting into evidence a neurological report dated March 18, 2003, an EMG report dated March 18, 2003, and an MRI report dated March 10, 2003. The benefit review conference (BRC) took place on January 8, 2003. From reviewing these records, it appears that claimant's appointments for the neurological exam, EMG, and MRI took place in March 2003. It was represented that these medical records were faxed from the doctor's office to claimant's attorney and then faxed the next day to carrier. Carrier represented that it received the exhibits on March 24, 2003.

Parties must exchange documentary evidence with each other not later than 15 days after the BRC and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981,

¹ As noted below, we are reforming regarding the beginning date of disability.

no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer obviously accepted claimant's representations that he had attempted to obtain the records soon after they were created and that he faxed them to carrier as soon as he got them. We conclude that there was no abuse of discretion in the admission of these exhibits.

We have reviewed the complained-of determinations regarding injury, waiver, and disability, and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

As reformed, we affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **UNITED STATES FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge